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Japan - Commerce Treaty VI
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NA - Mr. Hemmendinger

October 15, 1954

CP - Mr. Walker

Attached draft telegram to Tokyo re the Singer case

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In view of your concluding thought, it does not seem necessary to reach a definite conclusion as to the consistency of the foreign investment law and the FCH treaty, in the matter of remittance guarantees; and I would be reluctant to see us unnecessarily venture a definite legal opinion in this rather tangled situation. I therefore suggest that the last paragraph of the draft telegram be restated as follows:

"Doubt that mere denial guarantee of itself violation terms FCH treaty, if investment allowed otherwise. However, investment law has been administered in such way as to conflict with spirit of FCH treaty, if not its express terms. Suggest expediency of dropping violation question for time being."

With this change, you can mark it cleared so far as I am concerned. However, I cannot help wondering whether there is going to be any satisfactory solution of problems such as that of Singer, in terms of basic FCH treaty objectives, so long as Japan maintains a Foreign Investment Law which contemplates unequal treatment of different investors on the basis of administrative decisions and bargaining in each individual case.

Attachment:

Draft telegram to Tokyo

Not attached to file copy

DEPARTMENT OF STATE A/CDC/MR	
REVIEWED BY <i>[Signature]</i>	DATE 9-30-82
RDS ☐ or XDS ☐ EXT. DATE	
TS AUTH.	REASON(S)
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Japan-Communist Treaty
IAD - Mr. Waller
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TO: RA - Mr. Henningsen

DATE: June 30, 1955

FROM: L/S - Ely Maurer

SUBJECT: Ford Motor Company Claim to Tsurumi Property

Reference is made to the memorandum of conversation of June 13, 1955 with Mr. Frank, Washington representative of the Ford Motor Company, with respect to the latter's claim to certain property at Tsurumi, Japan. As I understand the situation, this property was owned by the Ford Motor Company before the war and was seized by the Japanese Government as enemy property. The United States Army has been occupying the property as an engineer depot since 1945. The Ford Motor Company has filed under the Japanese Peace Treaty a claim for the restoration of the property and another claim for compensation for the property if it cannot be returned. While at one time it appeared that the United States Army refused to vacate the property, it now appears that the Army is prepared to vacate the property if the Japanese Government supplies it with an alternate site as the Japanese Government is required to do under outstanding agreements.

In the circumstances there seem to be three possibilities:

1. If the property "cannot" be returned to the Ford Motor Company the Ford Motor Company is entitled to yen compensation. The relevant provision of the Japanese Treaty is Article 15 which reads as follows:

"(a) Upon application made within nine months of the coming into force of the present Treaty between Japan and the Allied Power concerned, Japan will, within six months of the date of such application, return the property, tangible and intangible, and all rights or interests of any kind in Japan of such Allied Power and its nationals which was within Japan at any time between December 7, 1941, and September 2, 1945, unless the owner has freely disposed thereof without duress or fraud. Such property shall be returned free of all encumbrances and charges to which it may have become subject because of the war, and without any charges for its return. Property whose return is not applied for by or on behalf of the owner or by his Government within the prescribed period may be disposed of by the Japanese Government as it may determine. In cases where such property was within Japan on December 7, 1941, and cannot be returned or has suffered injury or damage as a result of the war, compensation will be made on terms not less favorable than the terms provided in the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951." (Underlining supplied)

However

However, the yen which would be made available under the Property Compensation Law is subject to the normal foreign exchange controls and is not currently permitted to be converted. The Ford Company is evidently not too interested in this remedy.

2. In view of the fact that the Army is willing to give up this property, if the Japanese provide another site, it probably cannot be argued that the property "cannot" be returned. Accordingly the case becomes one where the Japanese Government has an obligation under Article 15 to restore the property within six months of the date of application. The Japanese Government appears to be in default on this obligation. However, the breach of this obligation to restore property probably only results in a liability for damages in yen. The Japanese could argue that this is the limit of their liability since, if they had restored the property and the Ford Motor Company had sold it, the Ford Motor Company would only have gotten yen subject to the normal foreign exchange controls. The Ford Motor Company is evidently not too interested in this remedy.

3. A third possibility is the invocation of Article VI paragraph 3 of the FCN Treaty which reads as follows:

"3. Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof."

as supplemented by Article XII paragraph 3 which reads as follows:

"3. If either Party impose exchange restrictions in accordance with paragraph 2 above, it shall, after making whatever provision may be necessary to assure the availability of foreign exchange for goods and services essential to the health and welfare of its people, make reasonable provision for the withdrawal, in foreign exchange in the currency of the other Party, of: (a) the compensation referred to in Article VI, paragraph 3, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments, and capital transfers, giving consideration to special needs for other transactions."

